United Nations A/53/1023

General Assembly

Distr.: General
20 July 1999

Original: English

Fifty-third session
Agenda item 124 (a)
Financing of the activities arising from Security Council resolution 687 (1991): United Nations Iraq-Kuwait Observation Mission

Financing of the activities arising from Security Council resolution 687 (1991): United Nations Iraq-Kuwait Observation Mission

Report of the Secretary-General

Summary

The present report is submitted pursuant to General Assembly resolution 52/238 of 26 June 1998, in which the Secretary-General was requested to continue his efforts to recover the overpayment of mission subsistence allowance in the United Nations Iraq-Kuwait Observation Mission and to submit a separate report to the Assembly at its fifty-third session on developments related to the issue, including measures taken with respect to those responsible for the overpayment. In order to assist him in determining accountability, the Secretary-General requested the Office of Internal Oversight Services to conduct an inquiry into the matter.

The updated amount of reported overpayment of $6,311,581.53 comprises $851,093.50 in respect of staff members and $5,460,488.03 in respect of military observers. As at 31 March 1999, a total of $935,187.37 had been recovered, comprising $766,263.13, or 90 per cent, of the amount due from staff members and $168,924.24, or 3 per cent, of the amount due from military observers; thus, a balance of $5,376,394.16 remains outstanding.

Based on its inquiry into mission subsistence allowance overpayments in UNIKOM, the Office of Internal Oversight Services concluded that the overpayments were attributable to a number of factors, including the failure of UNIKOM officials to comply with mission subsistence allowance policies and to promptly implement related audit recommendations, as well as a lack of clarity of the policies themselves. The report noted that, although extensive clarifications concerning mission subsistence allowance procedures as well as instructions to initiate recovery action were provided to the Mission by the Field

99-21332 (E) 300799

Administration and Logistics Division, a lack of monitoring of audit compliance by the Division resulted in continued non-compliance by the Mission. The report clarified the responsibilities for the implementation of mission subsistence allowance policies and identified the successive UNIKOM officials who were responsible for the Mission's failure to comply with those policies and, subsequently, to promptly and properly implement audit recommendations calling for corrective action and full recovery of the resulting overpayments.

The inquiry by the Office of Internal Oversight Services and responses from Member States regarding the basis for recovery of overpayment in respect of military observers had brought about a further review of the circumstances and the deviation from policy directives which led to the reported overpayment. The result of that review, as further elaborated in the body of the present report, revealed the intractable complexity of the old mission subsistence allowance policy and procedures, and more importantly the considerable potential for varying interpretations and applications. Furthermore, a very strict application of mission subsistence allowance procedures to military observers resulted in a considerable overestimation of the overpayment, requiring a re-evaluation of the decision on recovery taken by the General Assembly in its resolution 51/234 of 13 June 1997.

Mindful of these factors, as well as the fact that the United Nations Administrative Tribunal, by its decision of 11 March 1999, remanded to the Joint Appeals Board the appeal of three staff members against the recovery from them of overpayments of mission subsistence allowance, the Secretary-General decided, on the basis of extensive discussions between the offices concerned, not to initiate disciplinary proceedings in respect of any officials at the current stage.

Contents

		Paragraphs	*Page*
I.	Introduction	1–2	3
II.	The basis for recovery	3–23	3
	A. Policy on mission subsistence allowance	3	3
	B. Application to military observers	4–16	3
	C. Application to civilian staff	17–23	5
III.	Measures taken with respect to those responsible for the overpayment of mission subsistence allowance	24–26	6
IV.	Conclusions	27–29	7
Annex			
	Summary of mission subsistence allowance overpayment		8

I. Introduction

1. The present report is submitted pursuant to General Assembly resolution 52/238 of 26 June 1998, in which the Secretary-General was requested to continue his efforts to recover the overpayment of mission subsistence allowance in the United Nations Iraq-Kuwait Observation Mission (UNIKOM) and to report to the Assembly at its fifty-third session on developments related to the issue, including measures taken with respect to those responsible for the overpayment. In order to assist him in determining accountability, the Secretary-General requested the Office of Internal Oversight Services to conduct an inquiry into the matter.

2. The annex to the present document compares the information provided in the Secretary-General's previous report to the fifty-second session of the General Assembly (A/52/790 and Corr.1) with updated information as at 31 March 1999 on the amount of the overpayment, as well as the amount recovered.

II. The basis for recovery

A. Policy on mission subsistence allowance

3. The Office of Human Resources Management (OHRM), which establishes mission subsistence allowance rates, policies and rules, issued a mission report dated 29 April 1991 in which mission subsistence allowance rates and other terms and conditions for the payment of the allowance in UNIKOM were established. The report stated, *inter alia*, that "UNIKOM mission subsistence allowance rates should be paid on a continuous basis, including time out for leave purposes and for compensatory time off, within the prescribed limits: in view of the paucity of suitable relaxation or recreation facilities in the mission area and to compensate in part for climatic extremes and crowded conditions of life and work, the full mission subsistence allowance should be paid for compensatory time off and for accumulated leave within the prescribed limits of 1 ½ days per month worked, wherever it is taken (i.e., either within or outside the mission area)". An amendment to that policy was not made by OHRM until 1 March 1996, at which time, on the basis of a field review, it was decided, among other things, that when compensatory time off was taken outside the mission area a reduction of 50 per cent of the applicable mission subsistence allowance should apply.

B. Application to military observers

4. The reported overpayment of mission subsistence allowance with respect to military observers has been calculated on the following basis:

1. Compensatory time off taken in the home country

5. In line with the above-mentioned OHRM mission report, the UNIKOM Notes for the Guidance of Military Observers on Assignment provided that "observers are normally granted up to six days of compensatory time off with subsistence allowance for each month of continuous service" and that "normally, if compensatory time off is taken outside the mission area, the rate of mission subsistence allowance will be reduced to one half of the regular amount. However, exceptionally, and until further notice, military observers serving with UNIKOM may be paid the full rate of mission subsistence allowance during compensatory time off, *wherever it is taken*"(emphasis added).

6. The Field Administration Handbook and subsequent draft thereof, however, provides that no mission subsistence allowance is payable when compensatory time off is taken in the home country. Military observers have argued that compensatory time off was taken in accordance with the Notes for the Guidance of Military Observers, which did not explicitly preclude compensatory time off in the home country and that mission subsistence allowance payments were correctly utilized to purchase airline tickets home instead of spending compensatory time off elsewhere. The strict application of the general provision of the Field Administration Handbook as regards compensatory time off spent in the home country accounts for $1,668,090.00 of what had been reported as overpayment to military observers for the total period. Of this, however, $105,910.00 was overpaid as a result of the failure of the Mission to apply the decision of OHRM of 1 March 1996 that mission subsistence allowance paid for compensatory time off taken outside the mission area should be reduced by 50 per cent.

2. Payment of mission subsistence allowance in advance of accrued leave

7. As military observers were entitled to 1½ days of leave with payment of mission subsistence allowance, UNIKOM considered that, if the service of the military observer would continue with the mission for a period sufficient to earn the required leave credit, it did not matter when the actual leave with mission subsistence allowance took place. Based on the

criteria applied to civilian staff, mission subsistence allowance should not have been paid to military observers in respect of leave taken in advance and could only be paid if the credits were accrued before the leave was taken. Thus, although the leave with mission subsistence allowance entitlement eventually became due, the fact that it was taken prior to accrual became a basis for recovery. This is therefore a case of recovery on technical grounds, but not one of payment in excess of entitlement. This factor accounts for $1,448,369.83 of the reported overpayment.

3. Unearned compensatory time off

8. The remaining two fifths of the total reported overpayment to military observers in UNIKOM has been classified as "unearned" compensatory time off. Compensatory time off is normally earned at a rate of six days for each month of continuous service, including weekends and holidays. So long as the operational requirements of the mission are met, it is to be taken immediately following the period of continuous service during which it has been earned. Under ideal circumstances, therefore, military observers will work for one full month and then be allowed six days of rest.

9. UNIKOM applied a different system for calculating entitlement to compensatory time off, by which each day of continuous service resulted in an allowance of 0.2 days of compensatory time off, for the same total of 6 days rest per 30 days of continuous service. This system allowed the Mission sufficient flexibility in scheduling absence of military observers on compensatory time off, while ensuring that individual observers were not penalized if they could not take compensatory time off immediately after it had been earned. For example, after the normal 30 days of continuous service, an observer would be entitled to 6 days of compensatory time off. However, after 40 days of continuous service, an observer would be entitled to 8 days compensatory time off, rather than only 6 days. At the same time, it must be stressed that for any given tour of duty by an individual military observer, the total number of compensatory time off days granted was not permitted to exceed 56 days per annum. This included 2 days of compensatory time off granted for the last month of service, which was beyond the normal limit of 54 days per year.

10. Given that military observers are granted compensatory time off on the basis of continuous service, including weekends and holidays, six days of compensatory time off per month worked as opposed to eight weekend days is not considered excessive. Under the extremely harsh climatic conditions and the isolation of the demilitarized zone, moreover, it does not seem reasonable to disallow accrual of compensatory time off during partial months of service. Nevertheless, while the total number of days off were within prescribed limits, this application of compensatory time off policy was not in accordance with established policy. The category of unearned compensatory time off amounts to $2,344,028.20 and is the largest portion of the total reported overpayment to military observers.

11. As seen from the information provided in paragraphs 5 to 10 above, three categories account for nearly the totality of the reported overpayment to military observers of $5.4 million. The information illustrates that the issue is not so much one of excess leave and compensatory time off, but rather very restrictive interpretation and application of the conditions of accrual or payment of mission subsistence allowance in respect of such compensatory time off or leave. It could be strongly argued in this connection that the individuals concerned would have adjusted their plans regarding leave and compensatory time off to accommodate any promulgated restrictions, in which case the Organization would have in fact disbursed legitimately virtually all of the amount now reported as overpayment.

12. The overpayment to military observers represents the majority (86 per cent) of the total of overpayments. As can be seen from the annex, as at 31 March 1999, only 3 per cent ($168,924.24) had been recovered from military observers, compared with $122,573.50 (2 per cent), as previously reported. On that basis, the total updated balance that remains to be recovered, as at 31 March 1999, is $5,291,563.79. The efforts of the Secretariat to recover the overpayment have included communications to all permanent missions concerned outlining the problem and requesting their assistance in facilitating the recovery in accordance with the decisions and resolutions of the General Assembly.

13. As previously reported, notification letters were sent to each of the military observers who had departed from UNIKOM when the overpayment was detected through their respective permanent missions in New York. In addition, in July 1998, the United Nations Secretariat circulated a note verbale to all permanent missions concerned outlining the problem and requesting their assistance in facilitating the recovery in accordance with the decisions and resolutions of the General Assembly. As at 31 March 1999, 36 communications from individual military observers or Governments concerned had been received in response to the first notification and four communications had been received after the dispatch of the note verbale.

14. The responses received have challenged the recovery on the following grounds:

(a) That mission subsistence allowance had been paid in accordance with the provisions of UNIKOM standard operating procedures and of the Notes for Guidance of Military Observers on Assignment;

(b) That the periods of leave and compensatory time off had been duly approved by the competent authorities in the mission at that time;

(c) That military observers, who are assigned to the United Nations on a temporary basis, are assumed to be able to trust United Nations financial and personnel officials who instruct the observers on organizational rules and procedures upon their arrival to the mission area;

(d) That it was unfair to seek reimbursement from the officers so many years after they had served in UNIKOM and mission subsistence allowance had been paid;

(e) That under national legislation the claims would have lapsed, and that the recovery should be time-barred;

(f) That the matter was a dispute between United Nations/UNIKOM and the individual military observer concerned and should be resolved between the two.

15. Other responses sought further information and clarification on the applicable rules and regulations as well as on the causes leading to the overpayment. In addition, inquiries were made as to the basis of the calculations and supporting documentation to show that observers concerned had indeed been on leave or on compensatory time off during the respective periods.

16. In view of the above, the Secretariat conducted a further review of the basis for mission subsistence allowance overpayment and the consequent decision to recover. The assumptions for the recovery were also reviewed by the Office of Legal Affairs which arrived at the following conclusions, with regard to all three components of the reported mission subsistence allowance overpayment to military observers:

(a) With respect to the first component of the reported overpayments, it would appear that the payments by UNIKOM for days of compensatory time off days spent by military observers in their home countries did not contravene the applicable policies. In this connection, it should be noted that the payments were consistent with the Notes for Guidance of Military Observers on Assignment to UNIKOM, which were specifically issued to Member States and military observers as the terms governing the service of the military observers with UNIKOM;

(b) With respect to the second component of the reported overpayments, it would appear that the payments of mission subsistence allowance were, at most, inconsistent with the technical requirements. However, as the Office of Legal Affairs was informed that, in the end, the payments did not exceed the entitlements of the military observers because all payments of mission subsistence allowance for leave days taken in advance of their accrual were subsequently earned by the military observers, it would appear that the technical violations in those circumstances resulted in little or no additional financial cost to the Organization;

(c) With respect to the third component of the reported overpayments, from the documentation presented to the Office of Legal Affairs, it is not clear that the procedures for making payment by UNIKOM were inconsistent with the technical requirements. However, the Office was advised that, in the end, the payments did not exceed the entitlements of the military observers because the number of days of compensatory time off for which mission subsistence allowance was paid did not exceed those to which the observers would have been entitled had the established policy been applied. Under these circumstances, it would appear that the technical violations resulted in little or no additional financial cost to the Organization.

C. Application to civilian staff

17. The amount of mission subsistence allowance calculated as having been overpaid to civilian staff members assigned to UNIKOM amounts to less than 14 per cent of the total amount of the reported overpayments. Of this 14 per cent, which was paid to 192 staff members, 90 per cent ($766,263.13) has already been recovered. It is anticipated that the remaining amount outstanding from staff that are still in the service of the United Nations ($23,535.37) will be recovered by the end of 1999. Recovery from staff who have separated from the Organization ($61,285.00) also continues, although the prospects for full recovery are slim.

18. On 11 March 1999, the United Nations Administrative Tribunal issued a judgement remanding to the Joint Appeals Board for consideration on the merits the appeals of three staff members in connection with recovery of the reported overpayment. Those appeals challenge the principles underlying the conclusion arrived at earlier that the mission subsistence allowance policies had been misapplied.

19. The reported overpayment in respect of civilian staff has been calculated on the following basis:

1. Accrual of annual leave for which mission subsistence allowance would be paid

20. Staff members had the right to payment of mission subsistence allowance for 1½ days out of the 2½ days of annual leave earned per month. mission subsistence allowance overpayment stemmed from the interpretation that there should be an uninterrupted presence in the mission area for the full 30 days in order to earn the 1½ days of leave with an entitlement to mission subsistence allowance. Thus, following each absence from the mission area, the 30-day period for accrual of paid leave with mission subsistence allowance was expected to begin again. Under this interpretation, if a staff member served 20 days in the mission area, then spent a weekend away from the mission and then returned to the mission for a further 10 days, no leave with entitlement to mission subsistence allowance would be accrued. The UNIKOM administration, however, considered that the staff member would have earned 1½ days of paid leave with mission subsistence allowance for each month of assignment.

2. Payment of mission subsistence allowance for weekends and holidays spent outside the Mission area

21. The practice of UNIKOM concerning holidays and weekends falling within periods of leave was also questioned. The policy on mission subsistence allowance required that weekends and holidays during periods of annual leave should be counted as part of the total period of absence of the staff member from the mission area and that, for mission subsistence allowance to be paid for these holidays and weekends, the staff member had to have a sufficient number of days of leave with an entitlement to mission subsistence allowance. However, the repayment was calculated not only in this respect, but also in respect of weekends preceding and concluding annual leave.

3. Payment of mission subsistence allowance for periods of compensatory time off (occasional time off)

22. It was assumed that mission subsistence allowance was payable during periods of compensatory time off taken outside the mission area only to the extent that the time off was covered by the 1½ mission subsistence allowance credit points accrued under the conditions described in paragraph 20 above. Thus, a staff member who spent two days of compensatory time off outside the mission area would receive payment of mission subsistence allowance in respect of those two days only to the extent that they could be covered by accrued mission subsistence allowance credit points. UNIKOM paid mission subsistence allowance for the full period of compensatory time off taken outside the mission area, without a corresponding reduction in mission subsistence allowance credits, considering the latter as being applicable exclusively to annual leave.

4. Leave with mission subsistence allowance entitlement taken prior to having been earned

23. UNIKOM withheld payment of mission subsistence allowance for the days for which no credits had been earned, but later reimbursed the staff member once the entitlement was accrued. This payment was not deemed to be compliant with mission subsistence allowance procedures. This situation is similar to the one reported in paragraph 6 above relating to military observers.

III. Measures taken with respect to those responsible for the overpayment of mission subsistence allowance

24. The Office of Internal Oversight Services in its inquiry on mission subsistence allowance overpayments in UNIKOM reached the following conclusions:

(a) Successive mission officials failed to correct mission subsistence allowance payment procedures and did not initiate recovery action for overpayments in a timely manner. The overpayments, which had commenced in 1991, were initially identified by an internal audit in 1993; however, corrective action was only taken after a second field audit in 1995;

(b) Prior to promulgation of a new policy and procedures for payment of mission subsistence allowance in October 1997, mission subsistence allowance policies had not been clearly defined or articulated. This led to their incorrect application in a number of missions;

(c) The Field Administration and Logistics Division provided extensive clarifications concerning mission subsistence allowance procedures and instructed the Mission to initiate recovery action, but a lack of monitoring by Headquarters resulted in continued non-compliance by the Mission;

(d) The Mission, in responding to the initial 1993 internal audit recommendations, falsely stated that the practices resulting in the overpayments had been discontinued;

(e) Owing to delays in corrective action, according to the Mission's calculations, $6.3 million was overpaid to international civilian staff and military observers.

25. While parts of the contention by the local administration might have been germane, owing to the lack of a clearly defined and articulated mission subsistence allowance policy, the Mission should have started to determine the extent of the overpayment and implement recovery as recommended, even if it disputed Headquarters' interpretation of the policy. Furthermore, in one instance, the Mission reported that it had corrected its procedures whereas in fact it had not, rendering the monitoring of the implementation of audit recommendations by Headquarters all the more difficult. Corrective measures were taken and recovery actions initiated only after the second field audit, two years after the overpayments had initially been identified.

26. An in-depth review of all aspects of the issue of mission subsistence allowance overpayment in UNIKOM has been conducted among the offices concerned. Taking into account the conclusion drawn during that review as well as the findings of the report of the Office of Internal Oversight Services and the fact that some of the issues to be considered by the Joint Appeals Board will be relevant to the question of accountability, and given that those who administered the Mission have not been requested to provide comments on the findings of the Office of Internal Oversight Services, the Secretary-General has concluded that initiation of accountability measures or disciplinary proceedings would not be appropriate at the current stage.

IV. Conclusions

27. The inquiry by the Office of Internal Oversight Services brought about a further review of the circumstances and the deviation from policy directives which had led to the reported overpayment. The result of the review revealed the intractable complexity of the old mission subsistence allowance policy and procedures, and more importantly the considerable potential for varying interpretations and applications.

28. To address the complexities and diversity of interpretations of the mission subsistence allowance rules and procedures and to respond to the concerns expressed by the Advisory Committee on Administrative and Budgetary Questions and the General Assembly in its decision 51/218 E of 17 June 1997, in which the Secretary-General was requested to administer mission subsistence allowance on the basis of a seven-day, rather than five-day a week, the Secretary-General revised the policy related to the payment of mission subsistence allowance and promulgated a new policy in administrative instruction ST/AI/1997/6 of 20 October 1997. The instruction was prepared in the light of experience gained and represents a major departure from the older approach, which treated the allowance as a per diem, rather than as part of compensation. Under the new policy, mission subsistence allowance is paid for the actual period the staff member spends on mission-related *service*, including annual leave that is earned and taken during the mission assignment, weekends and holidays, irrespective of where they are spent. The Secretary-General is of the opinion that these clearer and simpler policies for payment of mission subsistence allowance have appropriately addressed the problems which arose in the past not only in UNIKOM, but in other missions.

29. In view of the above, it would be the intention of the Secretary-General, subject to the approval of the General Assembly, to continue recovery only in respect of civilian staff. Recoveries from military observers would be halted and those already effected would be reimbursed to the individuals concerned, except in respect of portions which represent mission subsistence allowance payments for compensatory time off taken outside the mission area after 1 March 1996, the date on which the reduction of mission subsistence allowance by half for compensatory time off taken outside the mission area was formally introduced.

Annex

Summary of mission subsistence allowance overpayment

(In United States dollars)

Category	Overpayment made: As reported in report of the Secretary-General (A/52/790) — Number of staff	Overpayment made: As reported in report of the Secretary-General (A/52/790) — Overpayment	Overpayment made: Updated information as at 31 December 1998 — Number of staff	Overpayment made: Updated information as at 31 December 1998 — Overpayment	Amount recovered as at 31 December 1997, as reported (A/52/790)	Amount recovered as at 31 March 1999	Balance
	(1)	(2)	(3)	(4)	(5)	(6)	(7) (4) - (6)
Civilian staff							
On United Nations Headquarters payroll	137	624 191.50[a]	137	624 191.50[a]	546 058.86	617 260.02	6 931.48
Serving at offices away from Headquarters	34	148 154.50	34	148 154.50	81 263.19	131 540.61	16 613.89
Separated from the Organization	21	78 747.50	21	78 747.50	1 380.00	17 462.50	61 285.00
Total	**192**	**851 093.50**	**192**	**851 093.50**	**628 702.05**	**766 263.13**	**84 830.37**
Military observers	1 426	5 461 108.03	1 425	5 460 488.03	122 573.50	168 924.24	5 291 563.79
Grand total	**1 618**	**6 312 201.53**	**1 617**	**6 311 581.53**	**751 275.55**	**935 187.37**	**5 376 394.16**

[a] Includes an amount of $4,372.50 related to two deceased staff members.